IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ADMIRALTY AND VICE ADMIRALTY JURISDICTION

ADMIRALTY SUIT NO. 31 OF 2002

Satnam Overseas Ltd ....*Plffs.*
vs.
Millenia Tower and Ors. ....*Defnds*

Mr. S.K. Sen i/b. R.A. Fernandes for the plffs.
Mr. Rahul Nirchania i/b. Bhatt for defnds.

CORAM: S.U. KAMDAR, J.

DATE : 23RD JUNE, 2005.

P.C. :

1. The present suit has been filed by the plaintiff for the recovery of U.S. Dollar 31,315.00 alongwith further interest at the rate of 12%p.a. on the principal amount of U.S. Dollar 27,810.00 Apart from the aforesaid relief of the money decree the plaintiff has also sued the first defendant no.1 in admiralty jurisdiction for its arrest and sale for the recovery of the aforesaid claim. claimed that

the amount of the recovery. Some of the material facts of the case can be briefly enumerated as under :

2. The plaintiff is carrying on business of export and in course of his business he exported the suit consignment through the first defendant vessel. The second defendant is a company which inter-alia carries on business of providing containers to the 1st defendant ship for the purpose of transportation of the goods. The third and fourth defendant is a company who is interalia carrying on business as carrier and has issued the relevant bill of lading while accepting the goods on board for the purpose of voyage. The defendant no.5 is a foreign company who has entered into contract with the plaintiff for the purpose of supply of sesame seeds.

3. It is the case of the plaintiff that pursuant to the contract of sale bearing No. SOL/CCL/16/01 dated 16.8.2001 the plaintiff has sold sesame seeds to the fifth defendant and inrespect thereof the plaintiff issued invoices

and executed the documents. The said goods were to be delivered to the fifth defendant on sight on the retirement of the documents by the fifth defendant.

4. However it is the case of the plaintiffs that the goods have been delivered without the retirement of the said documents and consequently the plaintiff has not received the price of the goods sold and delivered to the fifth defendant. In view of the fact that the bill of lading was issued by defendant no.3 and 4, the defendant nos.3 and 4 have been sued by the fifth defendant for wrongfully handing over the goods without retirement of documents. In so far the second defendant is concerned the second defendant has been impleaded as a party merely because he has issued the MATE receipt. This receipt inter-alia indicates that the second defendant has provided containers to the first defendant vessel for the purpose of transportation of the goods on voyage.

5. By an order dated 4.6.2003 issues were framed as against the second defendant. The defendant nos.1,3,4 and 5 are served. As far the defendant no.1 vessel is concerned it is an admitted position that the said vessel is not within an admiralty jurisdiction of this court. Thus no orders as prayed can be passed against defendant no.1 vessel. As far as defendant nos.3, 4 and 5 are concerned though they are served they have not filed written statement nor they have contested the present suit by leading necessary evidence. Issues framed between the plaintiffs and defendant no.2 reads as under :

1. Do the plaintiffs prove that they have any right, tile or locus to file the present suit against the defendant no.2 ?

2. Do the plaintiffs prove that the defendant no.2 are the agents of the 1st Defendant vessel ?

3. Do the plaintiffs prove that defendant no.2 in connivance and collusion with the other defendants is responsible for the mis-delivery of the consignment ?

4. Do the plaintiffs prove that this Hon’ble Court has jurisdiction to entertain and try the suit as against the 2nd defendants ?

5. Do the plaintiffs prove that the suit is barred by the limitation ?

6. Do the Plaintiffs prove that they are entitled to an order and decree for sum of USD 31,315/- alongwith further interest at 12% p.a. on USD 27,810/- from the date of filing of the suit until

payment/realisation ?

7. Generally ?

8. What order ?

6. In view thereof the suit has been essentially contested by the second defendant only. The evidence has been laid by the parties i.e. the plaintiff and respondent no.2 in the present proceedings. The plaintiff has led the evidenced of one Yogesh Bellani whereas the defendant nos.1 and 2 has led the evidence of one Kiran Talewadekar. In the evidence of the second defendant the second defendant has deposed that they are the agents of one Orient Overseas Container Line, Hong Kong. It has been further deposed by the second defendant that the second defendant are not liable because the second defendant is merely the container provider and

not the carrier of the said goods.

7. After perusing the evidence between the parties it is clear that no liability can be fastened on the second defendant merely on the basis of MATE receipt issued by the second defendant. It was not the duty of the second defendant to deliver the goods to the fifth defendant and retire the documents and receive the money to be paid over to the plaintiff herein. The second defendant is not the carrier of the goods and thus there can be no such liability of the second defendant for the retirement of the documents which was endorsed by the plaintiff to the third defendant who is the party who has issued the bill of lading. In view of the aforesaid the suit as against the defendant no.2 is required to be dismissed.

8. In so far as defendant nos.3, 4 and 5 are concerned they have not contested the suit though they are served. In view thereof decree is required to be passed as against the defendant

nos.3, 4 and 5 in terms of prayer clause (a) only. Thus I pass the following decree :

. There shall be decree in favour of the plaintiff and against the defendants no.3,4 and 5 in terms of prayer clause (a) and the suit as against defendant nos.1 and 2 is dismissed. No order as to costs.

sd/-

****